

Mar 05, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MELVIN N.,¹

Plaintiff,

vs.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:19-cv-03164-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 14, 15

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 14, 15. The parties consented to proceed before a magistrate judge. ECF No. 5. The Court, having reviewed the administrative record and the parties' briefing,

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

1 is fully informed. For the reasons discussed below, the Court denies Plaintiff's
2 motion, ECF No. 14, and grants Defendant's motion, ECF No. 15.

3 **JURISDICTION**

4 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);
5 1383(c)(3).

6 **STANDARD OF REVIEW**

7 A district court's review of a final decision of the Commissioner of Social
8 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
9 limited; the Commissioner's decision will be disturbed "only if it is not supported
10 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
11 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
12 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
13 (quotation and citation omitted). Stated differently, substantial evidence equates to
14 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
15 citation omitted). In determining whether the standard has been satisfied, a
16 reviewing court must consider the entire record as a whole rather than searching
17 for supporting evidence in isolation. *Id.*

18 In reviewing a denial of benefits, a district court may not substitute its
19 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
20 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one

1 rational interpretation, [the court] must uphold the ALJ's findings if they are
2 supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674
3 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an
4 ALJ's decision on account of an error that is harmless." *Id.* An error is harmless
5 "where it is inconsequential to the [ALJ's] ultimate nondisability determination."
6 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's
7 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
8 *Sanders*, 556 U.S. 396, 409-10 (2009).

9 **FIVE-STEP EVALUATION PROCESS**

10 A claimant must satisfy two conditions to be considered "disabled" within
11 the meaning of the Social Security Act. First, the claimant must be "unable to
12 engage in any substantial gainful activity by reason of any medically determinable
13 physical or mental impairment which can be expected to result in death or which
14 has lasted or can be expected to last for a continuous period of not less than twelve
15 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant's
16 impairment must be "of such severity that he is not only unable to do his previous
17 work[,] but cannot, considering his age, education, and work experience, engage in
18 any other kind of substantial gainful work which exists in the national economy."
19 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

1 The Commissioner has established a five-step sequential analysis to
2 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
3 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
4 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
5 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
6 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
7 404.1520(b), 416.920(b).

8 If the claimant is not engaged in substantial gainful activity, the analysis
9 proceeds to step two. At this step, the Commissioner considers the severity of the
10 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
11 claimant suffers from “any impairment or combination of impairments which
12 significantly limits [his or her] physical or mental ability to do basic work
13 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
14 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
15 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
16 §§ 404.1520(c), 416.920(c).

17 At step three, the Commissioner compares the claimant’s impairment to
18 severe impairments recognized by the Commissioner to be so severe as to preclude
19 a person from engaging in substantial gainful activity. 20 C.F.R. §§
20 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more

1 severe than one of the enumerated impairments, the Commissioner must find the
2 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

3 If the severity of the claimant's impairment does not meet or exceed the
4 severity of the enumerated impairments, the Commissioner must pause to assess
5 the claimant's "residual functional capacity." Residual functional capacity (RFC),
6 defined generally as the claimant's ability to perform physical and mental work
7 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
8 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the
9 analysis.

10 At step four, the Commissioner considers whether, in view of the claimant's
11 RFC, the claimant is capable of performing work that he or she has performed in
12 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
13 If the claimant is capable of performing past relevant work, the Commissioner
14 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).
15 If the claimant is incapable of performing such work, the analysis proceeds to step
16 five.

17 At step five, the Commissioner considers whether, in view of the claimant's
18 RFC, the claimant is capable of performing other work in the national economy.
19 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
20 the Commissioner must also consider vocational factors such as the claimant's age,

1 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
2 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
4 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
5 work, analysis concludes with a finding that the claimant is disabled and is
6 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

7 The claimant bears the burden of proof at steps one through four above.
8 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
9 step five, the burden shifts to the Commissioner to establish that 1) the claimant is
10 capable of performing other work; and 2) such work “exists in significant numbers
11 in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*
12 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

13 ALJ’S FINDINGS

14 On March 8, 2016, Plaintiff applied both for Title II disability insurance
15 benefits and Title XVI supplemental security income benefits alleging a disability
16 onset date of May 1, 2015. Tr. 85-86, 217-24. The applications were denied
17 initially and on reconsideration. Tr. 143-51, 157-76. Plaintiff appeared before an
18 administrative law judge (ALJ) on February 5, 2018. Tr. 42-84. On June 20,
19 2018, the ALJ denied Plaintiff’s claim. Tr. 12-33.

1 At step one of the sequential evaluation process, the ALJ found that Plaintiff
2 had not engaged in substantial gainful activity since May 1, 2015. Tr. 18. At step
3 two, the ALJ found that Plaintiff had the following severe impairments: bipolar
4 disorder, borderline personality disorder, and antisocial personality disorder. Tr.
5 18.

6 At step three, the ALJ found that Plaintiff did not have an impairment or
7 combination of impairments that met or medically equaled the severity of a listed
8 impairment. Tr. 18. The ALJ then concluded that Plaintiff had the RFC to
9 perform a full range of work at all exertional levels with the following
10 nonexertional limitations:

11 [Plaintiff] is able to understand, remember, and carry out simple
12 routine tasks in two hour intervals; [Plaintiff] can have occasional
13 superficial interactions with a small group of coworkers, defined as no
14 more than 20; [Plaintiff] cannot perform tandem tasks or tasks
involving cooperative team effort; and [Plaintiff] cannot have contact
with the general public.

15 Tr. 20.

16 At step four, the ALJ found that Plaintiff was unable to perform any past
17 relevant work. Tr. 26. At step five, the ALJ found that, considering Plaintiff's
18 age, education, work experience, RFC, and testimony from the vocational expert,
19 there were jobs that existed in significant numbers in the national economy that
20 Plaintiff could perform, such as industrial cleaner, kitchen helper, and laundry

1 worker. Tr. 28. Therefore, the ALJ concluded that Plaintiff was not under a
2 disability, as defined in the Social Security Act, from the alleged onset date of May
3 1, 2015, though the date of the decision. Tr. 28.

4 On May 17, 2019, the Appeals Council denied review of the ALJ's decision,
5 Tr. 1-6, making the ALJ's decision the Commissioner's final decision for purposes
6 of judicial review. *See* 42 U.S.C. § 1383(c)(3).

7 ISSUES

8 Plaintiff seeks judicial review of the Commissioner's final decision denying
9 him disability insurance benefits under Title II and supplemental security income
10 benefits under Title XVI of the Social Security Act. Plaintiff raises the following
11 issues for review:

- 12 1. Whether the ALJ conducted a proper step-three analysis;
- 13 2. Whether the ALJ properly evaluated Plaintiff's symptom claims; and
- 14 3. Whether the ALJ properly evaluated the medical opinion evidence.

15 ECF No. 14 at 2.

16 DISCUSSION

17 A. Step Three

18 Plaintiff contends that the ALJ erred at step three by finding Plaintiff's
19 impairments did not meet the paragraph C criteria for listing 12.04 and by failing
20 to make specific findings. ECF No. 14 at 3-7. At step three, the ALJ must

determine if a claimant's impairments meet or equal a listed impairment. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii). The Listing of Impairments "describes for each of the major body systems impairments [which are considered] severe enough to prevent an individual from doing any gainful activity, regardless of his or her age, education or work experience." 20 C.F.R. §§ 404.1525, 416.925. To meet a listed impairment, a claimant must establish that he meets each characteristic of a listed impairment relevant to his claim. 20 C.F.R. §§ 404.1525(d), 416.925(d). If a claimant meets the listed criteria for disability, he will be found to be disabled. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii). The claimant bears the burden of establishing he meets a listing. *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005). "An adjudicator's articulation of the reason(s) why the individual is or is not disabled at a later step in the sequential evaluation process will provide rationale that is sufficient for a subsequent reviewer or court to determine the basis for the finding about medical equivalence at step 3." SSR 17-2P, 2017 WL 3928306, at *4 (effective March 27, 2017).

In determining whether a claimant with a mental impairment meets a listed impairment, the ALJ must follow a "special technique" to evaluate the claimant's symptoms and rate his functional limitations. 20 C.F.R. §§ 404.1520a(a), 416.920a(a). Specifically, the ALJ must consider: (1) whether specific diagnostic criteria are met ("paragraph A" criteria); and (2) whether specific impairment-

1 related functional limitations are present (“paragraph B” and “paragraph C”
2 criteria). 20 C.F.R. §§ 404.1520a(b), 416.920a(b). The criteria in paragraph A
3 substantiate medically the presence of a particular mental disorder. 20 C.F.R. Pt.
4 404, Subpt. P, App. 1 § 12.00(A)(2)(a). The criteria in paragraphs B and C, on the
5 other hand, describe impairment-related functional limitations that are
6 incompatible with the ability to do any gainful activity. 20 C.F.R. Pt. 404, Subpt.
7 P, App. 1 § 12.00(A)(2)(b), (c). To meet or equal listing 12.04 (depressive,
8 bipolar, and related disorders), a claimant must satisfy either: (1) paragraphs A and
9 B; or (2) paragraphs A and C. 20 C.F.R. Pt. 404, Subpt. P, App. 1 § 12.00(A)(2).

10 “The paragraph C criteria are an alternative to the paragraph B criteria under
11 listings 12.02, 12.03, 12.04, 12.06, and 12.15.” 20 C.F.R. Pt. 404, Subpt. P, App. 1
12 § 12.00(G)(1). Specifically, the paragraph C criteria provide an alternative means
13 of demonstrating disability for those claimants who experience “serious and
14 persistent” mental disorders but whose “more obvious symptoms” have been
15 controlled by medication and mental health interventions. *Id.* To satisfy the
16 paragraph C criteria, a claimant must show that his mental impairment(s) has
17 existed for at least two years, and that (1) he relied, “on an ongoing basis, upon
18 medical treatment, mental health therapy, psychosocial support(s), or a highly
19 structured setting(s), to diminish the symptoms and signs of [his] mental disorder,”
20 and (2) despite his diminished symptoms and signs of his mental disorder, he has

1 achieved only “marginal adjustment,” meaning “minimal capacity to adapt to
2 changes in [his] environment or to demands that are not already part of [his] daily
3 life.” 20 C.F.R. Pt. 404, Subpt. P, App. 1 § 12.00(G)(2)(b)-(c).

4 On this record, the ALJ’s step three analysis and findings are adequate and
5 supported by substantial evidence. Plaintiff argues that it was error for the ALJ to
6 assert in boilerplate language that the paragraph C requirements were not met, and
7 to instead generally reference later findings in the decision. ECF No. 14 at 5
8 (citing Tr. 20). Focusing on the challenged paragraph C criteria analysis, the ALJ
9 considered Plaintiff’s mental impairments and found that they did not meet or
10 medically equal the paragraph C criteria. Tr. 20. More specifically, the ALJ found
11 “the record does not establish that [Plaintiff] had only marginal adjustment, that is,
12 a minimal capacity to adapt to changes in [Plaintiff’s] environment or to demands
13 that were not already part of [Plaintiff’s] daily life.” Tr. 20. The ALJ also stated,
14 “discussed in greater detail below, [Plaintiff] has adapted to the requirements of
15 daily life.” Tr. 20. The step three findings by the ALJ must be read in conjunction
16 with the entire ALJ decision. SSR 17-2P, 2017 WL 3928306, at *4. Here, the ALJ
17 discussed the medical records and medical opinions related to Plaintiff’s mental
18 impairments at great length. Tr. 21-26. The ALJ’s analysis in its entirety as to
19 Plaintiff’s mental health impairments permits the Court to meaningfully review the
20

1 ALJ's finding that Plaintiff's mental health impairments did not satisfy the
2 paragraph C criteria for listing 12.04.

3 Further, the ALJ's finding that Plaintiff did not satisfy the paragraph C
4 criteria is reasonable and supported by substantial evidence. The record reflects
5 that Plaintiff has more than a minimal capacity to adapt to changes in his
6 environment or to demands that are not already part of his daily life. As discussed
7 by the ALJ, prior to August 2016, Plaintiff had generally normal findings on his
8 mental status examinations. Tr. 23-25; *see, e.g.*, Tr. 395, 402, 408 (December
9 2015 to February 2016: Plaintiff was alert and cooperative with an appropriate
10 appearance); Tr. 402-03, 408-09 (December 2015 to January 2016: Plaintiff had
11 normal mood and affect, intact memory and concentration, logical and linear
12 thought, fair insight and judgment, and no ideations of self-harm or harming
13 others; however, his thought content exhibited some paranoia about getting
14 mugged and he carried pepper spray); Tr. 396-97 (February 2016: Plaintiff had
15 neutral to sad mood, intact memory and concentration, logical and linear thought,
16 fair insight and judgment, and no ideations of self-harm or harming others). The
17 ALJ also noted that after Lithium was added to Plaintiff's medication regimen in
18 2016, his symptoms improved significantly. Tr. 24; *see, e.g.*, Tr. 625 (December
19 2016: since starting Lithium, Plaintiff reported "a big change" in his mood; he
20 described zero anger outbursts, feeling calm, engaging in more "adult-like"

1 behavior with his father; and he reported no adverse side effects); Tr. 615
2 (February 2017: Plaintiff reported that Lithium had been beneficial; he was not
3 getting as angry or agitated anymore, although he did endorse several breakthrough
4 moments of feeling agitated; he was medication compliant without side effects).
5 The ALJ observed that Plaintiff was able to maintain his finances, follow written
6 and visual instructions, and care for his children, which included feeding them,
7 playing with them, changing their diapers, reading to them, and putting them to
8 bed. Tr. 19-20, 272, 274, 276. The ALJ also gave great weight to Michael Rose,
9 Ph.D., and Ben Kessler, Psy.D., State agency physicians who specifically
10 considered listing 12.04 and determined that Plaintiff did not meet or equal a listed
11 impairment. Tr. 26, 106, 121.

12 Plaintiff argues that the evidence supports a conclusion of marginal
13 adjustment. ECF No. 14 at 3-7. He asserts that his father reported Plaintiff did not
14 handle stress or change well and needed reminders to take medications, perform
15 chores and household responsibilities, and attend appointments, Tr. 287-94, and
16 Plaintiff's treating therapist, Ivonne Garcia, MHP/MS, opined that he met the
17 requirement of marginal adjustment. Tr. 439. Further, Plaintiff argues that the
18 ALJ failed to address other pertinent evidence in the record that supported the
19 marginal adjustment requirement. ECF No. 14 at 6-7; *see, e.g.*, Tr. 433 (April
20 2016: Plaintiff endorsed homicidal ideation); Tr. 451-53 (July 2016: Plaintiff had

1 worse symptoms after his SSI claim was denied and he started a new medication);
2 Tr. 631, 637 (July and August 2016: Plaintiff's bipolar questionnaire scores were
3 elevated, and he presented with tearfulness, dysthymia, depression, and paranoia;
4 he described feeling trapped and unable to handle his everyday responsibilities²);
5 Tr. 54, 467-70, 546, 629 (August 25, 2016: Plaintiff was arrested for receiving
6 explosives in the mail, which he had planned to use to make smoke bombs); Tr.
7 470 (September 6, 2016: Plaintiff was incarcerated and started on Lithium).

8 However, although not addressed under the step three analysis, and with the
9 exception of Plaintiff's bipolar questionnaire scores, the ALJ discussed this
10 information in her decision. Tr. 23-24; *see* SSR 17-2P, 2017 WL 3928306, at *4
11 ("An adjudicator's articulation of the reason(s) why the individual is or is not
12 disabled at a later step in the sequential evaluation process will provide rationale
13 that is sufficient for a subsequent reviewer or court to determine the basis for the
14 finding about medical equivalence at step 3."). Plaintiff essentially invites this
15 Court to reweigh the evidence, but Plaintiff's alternate interpretation is not enough
16 to assign error to the ALJ's findings. It is the ALJ's responsibility to resolve

17 _____
18 ² Plaintiff cites a treatment note stating he reported feeling trapped, as "[b]efore I
19 was able to do whatever I wanted, now I have the kids 24/7 and responsibilities. I
20 don't know what to do." Tr. 631.

1 conflicts in the medical evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
2 Cir. 1995). Where the ALJ's interpretation of the record is reasonable as it is here,
3 it should not be second-guessed. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir.
4 2001). The Court must consider the ALJ's decision in the context of "the entire
5 record as a whole," and if the "evidence is susceptible to more than one rational
6 interpretation, the ALJ's decision should be upheld." *Ryan v. Comm'r of Soc. Sec.*,
7 528 F.3d 1194, 1198 (9th Cir. 2008) (internal quotation marks omitted). The
8 ALJ's determination that Plaintiff's mental health impairments did not meet the
9 paragraph C criteria is supported by substantial evidence in the record as whole.

10 **B. Plaintiff's Symptom Claims**

11 Plaintiff faults the ALJ for failing to rely on clear and convincing reasons in
12 discrediting his symptom claims. ECF No. 14 at 7-13. An ALJ engages in a two-
13 step analysis to determine whether to discount a claimant's testimony regarding
14 subjective symptoms. Social Security Ruling (SSR) 16-3p, 2016 WL 1119029, at
15 *2. "First, the ALJ must determine whether there is objective medical evidence of
16 an underlying impairment which could reasonably be expected to produce the pain
17 or other symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation marks omitted).
18 "The claimant is not required to show that [the claimant's] impairment could
19 reasonably be expected to cause the severity of the symptom [the claimant] has
20

1 alleged; [the claimant] need only show that it could reasonably have caused some
2 degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

3 Second, “[i]f the claimant meets the first test and there is no evidence of
4 malingering, the ALJ can only reject the claimant’s testimony about the severity of
5 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
6 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
7 omitted). General findings are insufficient; rather, the ALJ must identify what
8 symptom claims are being discounted and what evidence undermines these claims.
9 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th 1996); *Thomas v. Barnhart*,
10 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently explain why it
11 discounted claimant’s symptom claims)). “The clear and convincing [evidence]
12 standard is the most demanding required in Social Security cases.” *Garrison v.*
13 *Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec.*
14 *Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

15 Factors to be considered in evaluating the intensity, persistence, and limiting
16 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
17 duration, frequency, and intensity of pain or other symptoms; 3) factors that
18 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
19 side effects of any medication an individual takes or has taken to alleviate pain or
20 other symptoms; 5) treatment, other than medication, an individual receives or has

1 received for relief of pain or other symptoms; 6) any measures other than treatment
2 an individual uses or has used to relieve pain or other symptoms; and 7) any other
3 factors concerning an individual's functional limitations and restrictions due to
4 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §§
5 404.1529(c), 416.929(c). The ALJ is instructed to "consider all of the evidence in
6 an individual's record," to "determine how symptoms limit ability to perform
7 work-related activities." SSR 16-3p, 2016 WL 1119029, at *2.

8 The ALJ found that Plaintiff's medically determinable impairments could
9 reasonably be expected to cause the alleged symptoms, but that Plaintiff's
10 statements concerning the intensity, persistence, and limiting effects of his
11 symptoms were not entirely consistent with the evidence. Tr. 22.

12 *1. Not Supported by Objective Medical Evidence*

13 The ALJ found that Plaintiff's symptom complaints were not supported by
14 the objective medical evidence. Tr. 22, 26. An ALJ may not discredit a claimant's
15 symptom testimony and deny benefits solely because the degree of the symptoms
16 alleged is not supported by the objective medical evidence. *Rollins*, 261 F.3d at
17 857; *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991). However, the
18 objective medical evidence is a relevant factor, along with the medical source's
19 information about the claimant's pain or other symptoms, in determining the
20

1 severity of a claimant's symptoms and their disabling effects. *Rollins*, 261 F.3d at
2 857; 20 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2).

3 Here, the ALJ discussed Plaintiff's alleged symptoms that caused him to be
4 unable to work, such as bipolar disorder, panic attacks, depression, and super
5 ventricular tachycardia. Tr. 21. The ALJ cited Plaintiff's reports that his
6 impairments caused him to "stress out easily, become extremely angry, and scream
7 at and threaten" others including employers and supervisors. Tr. 21 (citing Tr.
8 271). The ALJ also cited Plaintiff's allegations that he was extremely violent with
9 other adults and tended to avoid others or hide, he could only pay attention for two
10 to three minutes, and did not finish what he started. Tr. 21. However, the ALJ
11 found that treatment records showed mostly normal findings that did not support
12 Plaintiff's allegations of total disability. Tr. 22-24, 26; *see, e.g.*, Tr. 364
13 (November 2015: a mental status examination showed Plaintiff had good eye
14 contact, no psychomotor movements, and normal speech with a rapid rate; his
15 thought process was tangential; he was extremely talkative but easy to redirect; he
16 had euthymic mood, congruent affect, and he denied any psychosis; he had
17 moderate insight and judgment with somewhat impaired concentration and
18 attention; he had intact memory and normal intellectual ability); Tr. 395, 402, 408
19 (December 2015 to February 2016: Plaintiff was alert and cooperative with an
20 appropriate appearance); Tr. 402-03, 408-09 (December 2015 to January 2016:

1 Plaintiff had normal mood and affect, intact memory and concentration, logical and
2 linear thought, fair insight and judgment, and no ideations of self-harm or harming
3 others; however, his thought content exhibited some paranoia about getting
4 mugged and he carried pepper spray); Tr. 396-97 (February 2016: Plaintiff had
5 neutral to sad mood, intact memory and concentration, logical and linear thought,
6 fair insight and judgment, and no ideations of self-harm or harming others); Tr.
7 444 (April 2016: Plaintiff's speech was slightly pressured and rapid, his mood was
8 slightly manic and positive, and he endorsed homicidal ideation); Tr. 461-62 (May
9 2016: Plaintiff's speech was not as pressured or rapid, his mood was positive, he
10 was slightly manic but with no evidence of depression, and he had no homicidal
11 ideation); Tr. 455-56 (June 2016: Plaintiff had congruent affect, intact memory,
12 attention, and concentration, and logical and linear thought form despite facing
13 situational stressors due to legal issues); Tr. 633-34 (August 2016: Plaintiff had
14 normal findings upon mental status examination); Tr. 625 (December 2016:
15 Plaintiff was imprisoned for about four months and returned to treatment in
16 December 2016); Tr. 626 (December 2016: Plaintiff had a normal mental status
17 examination with a pleasant and happy mood, full ranging affect, intact memory,
18 attention, and concentration, logical and linear thought form, and normal cognitive
19 function); Tr. 558, 564, 572, 577, 582, 590, 608-09, 615-16, 619-20 (January 2017
20 to November 2017: treatment records showed that Plaintiff continued to have

1 generally normal mental status examination findings while he remained medication
2 compliant, with only some reports of mild anxiety secondary to situational
3 stressors); Tr. 590, 598-99 (April 13, 2017: Plaintiff had a slight increase in
4 anxiety, but he attributed the majority of his symptoms to stress over a court
5 hearing; he returned to having normal mental status examination findings at his
6 next appointment).

7 Plaintiff argues that the ALJ's findings are not supported by the record, and
8 instead, the objective findings are consistent with his allegations. ECF No. 14 at 9-
9 10; *see, e.g.*, Tr. 364 (November 2, 2015: thought process is tangential); Tr. 385
10 (December 21, 2015: thought content exhibited paranoia that others involved in
11 gangs will jump him or concerned about why others are not calling him back); Tr.
12 379 (January 27, 2016: thought content exhibited paranoia); Tr. 375 (February 3,
13 2016: presented with anxious mood); Tr. 369 (February 24, 2016: reported feeling
14 manic, had anxious affect); Tr. 367 (March 14, 2016: tearful and reported feeling
15 manic, had anxious affect); Tr. 433 (April 11, 2016: endorsed fairly recent suicidal
16 ideation, about six months ago; endorsed some ongoing homicidal ideation, most
17 recently about three nights ago); Tr. 443-44 (April 14, 2016: presented as slightly
18 manic, endorsed homicidal ideation, anxiety, and paranoid thoughts); Tr. 441
19 (April 18, 2016: continued to endorse anxiety, but stated that medication and
20 utilizing his learned coping skills had been beneficial); Tr. 460-61 (May 12, 2016:

1 worried and paranoid about possibly going to prison); Tr. 458 (May 26, 2016:
2 feeling very emotional and manic due to the stress of legal issues; he was
3 tangential); Tr. 452 (July 18, 2016: endorsed thoughts of self-harm and harm to
4 others, but denied plan/intent); Tr. 637 (July 19, 2016: endorsed feeling a little
5 manic and having anxiety; he was tearful); Tr. 631 (August 23, 2016: tearful part
6 of the session); Tr. 470 (September 6, 2016: treatment note while in jail stated
7 Plaintiff's mood was still somewhat labile); Tr. 603 (April 11, 2017: anxious); Tr.
8 599 (April 13, 2017: anxious); Tr. 590 (May 12, 2017: mild anxiety); Tr. 587 (May
9 16, 2017: continued to endorse anxiety, but stated that medication and utilizing his
10 learned coping skills had been beneficial); Tr. 582 (June 12, 2017: mild anxiety);
11 Tr. 577 (July 10, 2017: mild anxiety); Tr. 572 (August 21, 2017: mild anxiety); Tr.
12 570 (August 25, 2017: labile mood, tearful at times when talking about his kids
13 and his current situation with ex-partner); Tr. 561 (November 3, 2017: labile
14 mood); Tr. 564 (October 3, 2017: mild anxiety); Tr. 558 (November 7, 2017: mild
15 anxiety); Tr. 649 (December 11, 2017: mild anxiety); Tr. 644 (January 12, 2018:
16 anxious mood, but provider reported that "he looks more stable, less anxious than
17 last sessions"). It is the ALJ's responsibility to resolve conflicts in the medical
18 evidence. *Andrews*, 53 F.3d at 1039. Where the ALJ's interpretation of the record
19 is reasonable as it is here, it should not be second-guessed. *Rollins*, 261 F.3d at
20 857. The Court must consider the ALJ's decision in the context of "the entire

1 record as a whole,” and if the “evidence is susceptible to more than one rational
2 interpretation, the ALJ’s decision should be upheld.” *Ryan*, 528 F.3d at 1198
3 (internal quotation marks omitted). Here, the ALJ reasonably concluded, based on
4 this record, that the objective medical evidence did not support the level of
5 impairment alleged by Plaintiff. Tr. 22, 26. The ALJ’s finding is supported by
6 substantial evidence and was a clear and convincing reason, in conjunction with
7 Plaintiff’s improvement with treatment, *see infra*, to discount Plaintiff’s symptom
8 complaints.

9 2. *Improvement with Treatment*

10 The ALJ found that Plaintiff’s symptom claims were inconsistent with the
11 level of improvement he showed with medication. Tr. 19, 24. The effectiveness of
12 treatment is a relevant factor in determining the severity of a claimant’s symptoms.
13 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3); *see Warre v. Comm’r of Soc. Sec.*
14 *Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (conditions effectively controlled
15 with medication are not disabling for purposes of determining eligibility for
16 benefits) (internal citations omitted); *see also Tommasetti v. Astrue*, 533 F.3d 1035,
17 1040 (9th Cir. 2008) (a favorable response to treatment can undermine a claimant’s
18 complaints of debilitating pain or other severe limitations).

19 Here, the ALJ noted that Plaintiff’s allegations of disabling mental health
20 symptoms were inconsistent with his treatment records which documented

1 significant overall improvement after he was started on Lithium in 2016. Tr. 19,
2 23-24, 26; *see, e.g.*, Tr. 625-26 (December 2016: after he began taking Lithium,
3 Plaintiff reported “a big change” in his mood; he described zero anger outbursts,
4 feeling calm, interacting in a more “adult like” manner, and reported no medication
5 side effects; Plaintiff’s mental status examination was essentially normal; his
6 memory, attention, concentration, thought form, and cognitive function were all
7 normal; he had a pleasant and happy mood with full ranging of affect and was
8 “[c]ertainly not hypomanic or depressed”); Tr. 615 (February 2017: Plaintiff
9 reported that he was feeling good and that Lithium was beneficial for stabilizing
10 his mood); Tr. 589 (May 2017: Plaintiff reported that Lithium was adequately
11 managing his bipolar symptoms); Tr. 648 (December 11, 2017: Plaintiff reported
12 improved mood since increasing Lithium; no adverse side effects). On this record,
13 the ALJ reasonably concluded that the improvement Plaintiff reported with his
14 medication supported a finding that he was capable of work with the nonexertional
15 limitations set forth in the RFC, which was inconsistent with Plaintiff’s subjective
16 symptom claims. This was a clear and convincing reason to discredit Plaintiff’s
17 symptom allegations.

18 *3. Reasons for Stopping Work*

19 The ALJ found that Plaintiff’s symptom complaints were less reliable
20 because he stopped working for reasons other than his impairments and provided

1 inconsistent statements regarding why his work ended. Tr. 21. An ALJ may
2 consider that a claimant stopped working for reasons unrelated to the allegedly
3 disabling condition in making a credibility determination. *See Bruton v.*
4 *Massanari*, 268 F.3d 824, 828 (9th Cir. 2001). Further, in evaluating a claimant's
5 symptom claims, the ALJ may consider "ordinary techniques of credibility
6 evaluation, such as the claimant's reputation for lying, prior inconsistent
7 statements . . . and other testimony by the claimant that appears less than candid."
8 *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996).

9 Here, the ALJ noted that Plaintiff alleged he was unable to work due to
10 bipolar disorder, panic attacks, depression, and super ventricular tachycardia. Tr.
11 21. However, the ALJ also observed that Plaintiff reported he stopped working
12 due to lack of transportation and stress. Tr. 21 (citing Tr. 249). The ALJ noted
13 that Plaintiff alleged his impairments caused him to "stress out easily, become
14 extremely angry, and scream at and threaten" others, including employers and
15 supervisors. Tr. 21 (citing Tr. 271). While Plaintiff reported lack of transportation
16 as one additional reason for stopping work, he consistently reported that stress
17 related to his impairments caused him to stop working. Tr. 249, 271. The ALJ's
18 determination that Plaintiff stopped work for reasons unrelated to his impairments,
19 and that he provided conflicting statements about his reasons for stopping work,
20 are not supported by substantial evidence. Therefore, to the extent that this was a

1 basis for the ALJ to discount Plaintiff's symptom claims, this was not clear and
2 convincing reason to do so.

3 This error is harmless because the ALJ identified other specific, clear, and
4 convincing reasons to discount Plaintiff's symptom claims. *See Carmickle v.*
5 *Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008); *Molina*, 674
6 F.3d at 1115 (“[S]everal of our cases have held that an ALJ’s error was harmless
7 where the ALJ provided one or more invalid reasons for disbelieving a claimant’s
8 testimony, but also provided valid reasons that were supported by the record.”);
9 *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004)
10 (holding that any error the ALJ committed in asserting one impermissible reason
11 for claimant’s lack of credibility did not negate the validity of the ALJ’s ultimate
12 conclusion that the claimant’s testimony was not credible).

13 4. Failure to Follow Treatment Recommendations

14 Defendant argues that the ALJ discounted Plaintiff's reported symptoms
15 because Plaintiff failed to follow a prescribed course of treatment. ECF No. 15 at
16 7 (citing Tr. 23-24). Unexplained, or inadequately explained, failure to seek
17 treatment or follow a prescribed course of treatment may be the basis for an
18 adverse credibility finding unless there is good reason for the failure. *Orn v.*
19 *Astrue*, 495 F.3d 625, 638 (9th Cir. 2007). Here, the ALJ noted that Quetiapine
20 was added to Plaintiff's medication regimen in July 2016, but Plaintiff

1 discontinued this medication after taking it for two nights because it was too
2 sedating and it made him angry, even after taking only a half dose the second
3 night. Tr. 23, 636. The ALJ noted that a nurse informed Plaintiff that the side
4 effects of Quetiapine usually decreased and disappeared after a week or two, but
5 Plaintiff was not willing to continue the medication. Tr. 23 (citing Tr. 636). The
6 ALJ also observed that Plaintiff was not willing to try Lithium prior to August
7 2016. Tr. 24, 625. However, the ALJ did not specifically discount Plaintiff's
8 reported symptoms because he chose to discontinue Quetiapine or was unwilling to
9 try Lithium until August 2016. To rely on noncompliance as a basis to discount
10 Plaintiff's reported symptoms, the ALJ was required to give "specific, clear and
11 convincing reasons" for the rejection. *Ghanim*, 763 F.3d at 1163. Here, to the
12 extent that the ALJ may have offered this reasoning, the ALJ's general finding was
13 insufficient.

14 Even if the ALJ's general finding was sufficient, any decision to discount
15 Plaintiff's symptoms as a result of this reported medication noncompliance is not
16 supported by substantial evidence. First, the record is unclear as to why Plaintiff
17 was unwilling to try Lithium prior to his incarceration in August 2016. Tr. 625
18 (December 2016: provider stated in a treatment note that Lithium "was a
19 medication [Plaintiff] was unwilling to try prior to his incarceration," but the
20 treatment note does not state the reason for Plaintiff's unwillingness to try the

1 medication). If this “medication noncompliance” was due to Plaintiff’s mental
2 health condition, then it would have been improper for the ALJ to discount
3 Plaintiff’s reported symptoms for this reason. *See Nguyen v. Chater*, 100 F.3d
4 1462, 1465 (9th Cir. 1996) (recognizing when noncompliance is partly due to a
5 claimant’s mental health condition, it may be inappropriate to consider a
6 claimant’s lack of mental health treatment when evaluating the claimant’s failure
7 to participate in treatment). Second, as the ALJ stated, Plaintiff chose to stop
8 taking Quetiapine due to negative side effects. Plaintiff asserts that he is unable to
9 work in part due to his anger symptoms, and he reported to his provider that
10 Quetiapine made him “so angry,” very sedated, and irritable, even when taking
11 only a half dose. Tr. 636. Plaintiff did not delay in reporting these negative side
12 effects, as he was prescribed Quetiapine on July 18, 2016, and his call to report the
13 negative side effects was memorialized in a treatment note four days later, on July
14 22, 2016. Tr. 636. Moreover, when Plaintiff called to report the negative side
15 effects of Quetiapine, he wanted to know if his provider would make another
16 medication change. Tr. 636. The record documents the reason that Plaintiff
17 decided to stop taking Quetiapine. Finally, the remainder of the record indicates
18 that Plaintiff otherwise complied with medication recommendations unless he
19 experienced negative side effects. *See, e.g.*, Tr. 409 (December 2015: Plaintiff’s
20 Lamotrigine was increased); Tr. 411 (December 2015: Plaintiff reported that his

1 medication was helping his mood swings, but he still felt anxious and had
2 problems sleeping); Tr. 403 (January 2016: Plaintiff began taking Abilify); Tr. 396
3 (February 2016: Plaintiff started taking Bupropion and Abilify was stopped); Tr.
4 443 (April 2016: Plaintiff reported feeling “really good” on Bupropion, his
5 provider increased Lamotrigine and proceeded to monitor for symptom
6 improvement); Tr. 441 (April 2016: Plaintiff’s provider noted he continued to
7 endorse anxiety, but Plaintiff stated that medication and utilizing his learned
8 coping skills had been beneficial); Tr. 54 (February 5, 2018: Plaintiff testified, “I
9 take my medications as prescribed”).

10 Even if the ALJ erred by discounting Plaintiff’s symptom claims because of
11 treatment noncompliance, this error is harmless because, as discussed *supra*, the
12 ALJ provided other legally sufficient reasons to discount Plaintiff’s reported
13 symptoms. *See Carmickle*, 533 F.3d at 1163.

14 5. *Inconsistent with Activities*

15 Defendant argues that the ALJ discounted Plaintiff’s reported symptoms
16 because of Plaintiff’s activities. ECF No. 15 at 9-10 (citing Tr. 19-20). An ALJ
17 may consider a claimant’s activities that undermine reported symptoms. *Rollins*,
18 261 F.3d at 857. If a claimant can spend a substantial part of the day engaged in
19 pursuits involving the performance of exertional or nonexertional functions, the
20 ALJ may find these activities inconsistent with the reported disabling symptoms.

1 *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989); *Molina*, 674 F.3d at 1113.

2 “While a claimant need not vegetate in a dark room in order to be eligible for
3 benefits, the ALJ may discount a claimant’s symptom claims when the claimant
4 reports participation in everyday activities indicating capacities that are
5 transferable to a work setting” or when activities “contradict claims of a totally
6 debilitating impairment.” *Molina*, 674 F.3d at 1112-13.

7 Here, in the context of the listings analysis, the ALJ observed that although
8 Plaintiff alleged difficulty handling stress and changes in his routine, in March
9 2016 he reported that he provided care for his children, including feeding them,
10 reading to them, changing diapers, playing with them, and putting them to bed. Tr.
11 20 (citing Tr. 272, 277). The ALJ also noted that Plaintiff could prepare simple
12 meals and perform household chores. Tr. 20 (citing Tr. 273). However, the ALJ
13 did not discuss or rely on Plaintiff’s activities as a reason to discount Plaintiff’s
14 symptom claims. Instead, the ALJ limited her discussion of Plaintiff’s activities to
15 the analysis of the specific functional area of adapting and managing himself under
16 the step three findings. Tr. 20. The Court is constrained to affirming the ALJ’s
17 decision on a ground that the ALJ invoked in making her decision. *See Orn*, 495
18 F.3d at 630; *Stout v. Comm’r, Soc. Sec. Admin*, 454 F.3d 1050, 1054 (9th Cir.
19 2006). As the ALJ did not rely on Plaintiff’s activities to discredit his symptom
20

1 allegations, this was not a clear and convincing reason to discount his subjective
2 claims.

3 Even if the ALJ erred by discounting Plaintiff's symptom claims because of
4 his reported activities, this error is harmless because, as discussed *supra*, the ALJ
5 provided other legally sufficient reasons to discount Plaintiff's reported symptoms.
6 *See Carmickle*, 533 F.3d at 1163.

7 C. Medical Opinion Evidence

8 Plaintiff challenges the ALJ's evaluation of the medical opinions of R.A.
9 Cline, Psy.D., Faulder Colby, Ph.D., and Ivonne Garcia, MHP, MS. ECF No. 14 at
10 13-21.

11 There are three types of physicians: "(1) those who treat the claimant
12 (treating physicians); (2) those who examine but do not treat the claimant
13 (examining physicians); and (3) those who neither examine nor treat the claimant
14 [but who review the claimant's file] (nonexamining [or reviewing] physicians)."
15 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).
16 Generally, a treating physician's opinion carries more weight than an examining
17 physician's opinion, and an examining physician's opinion carries more weight
18 than a reviewing physician's opinion. *Id.* at 1202. "In addition, the regulations
19 give more weight to opinions that are explained than to those that are not, and to
20

1 the opinions of specialists concerning matters relating to their specialty over that of
2 nonspecialists.” *Id.* (citations omitted).

3 If a treating or examining physician’s opinion is uncontradicted, the ALJ
4 may reject it only by offering “clear and convincing reasons that are supported by
5 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
6 “However, the ALJ need not accept the opinion of any physician, including a
7 treating physician, if that opinion is brief, conclusory, and inadequately supported
8 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
9 (9th Cir. 2011) (internal quotation marks and brackets omitted). “If a treating or
10 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
11 may only reject it by providing specific and legitimate reasons that are supported
12 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830–
13 31. The opinion of a nonexamining physician may serve as substantial evidence if
14 it is supported by other independent evidence in the record. *Andrews*, 53 F.3d at
15 1041.

16 “Only physicians and certain other qualified specialists are considered
17 ‘[a]cceptable medical sources.’ ” *Ghanim*, 763 F.3d at 1161 (alteration in original);
18
19
20

1 *see* 20 C.F.R. §§ 404.1513, 416.913 (2013).³ However, an ALJ is required to
2 consider evidence from non-acceptable medical sources. *Sprague v. Bowen*, 812
3 F.2d 1226, 1232 (9th Cir. 1987); 20 C.F.R. §§ 404.1513(d), 416.913(d) (2013).
4 “Other sources” include nurse practitioners, physicians’ assistants, therapists,
5 teachers, social workers, spouses, and other non-medical sources. 20 C.F.R. §§
6 404.1513(d), 416.913(d) (2013). An ALJ may reject the opinion of a non-
7 acceptable medical source by giving reasons germane to the opinion. *Ghanim*, 763
8 F.3d at 1161.

9 *1. Dr. Cline*

10 On April 5, 2016, R.A. Cline, Psy.D., conducted a psychological evaluation
11 and diagnosed Plaintiff with borderline personality disorder, antisocial personality
12 disorder traits, unspecified bipolar disorder, and marijuana use disorder in early
13 reported remission. Tr. 429-33. Dr. Cline opined that Plaintiff had marked
14 limitations in the ability to communicate and perform effectively in a work setting,
15 maintain appropriate behavior in a work setting, and complete a normal workday
16

17 ³ For cases filed prior to March 27, 2017, the definition of an acceptable medical
18 source, as well as the requirement that an ALJ consider evidence from non-
19 acceptable medical sources, are located at 20 C.F.R. §§ 404.1513(d), 416.913(d)
20 (2013).

1 and workweek without interruptions from psychologically based symptoms. Tr.
2 432. She found moderate limitations in Plaintiff's ability to understand, remember,
3 and persist in tasks by following detailed instructions, perform activities within a
4 schedule, maintain regular attendance, be punctual within customary tolerances
5 without special supervision, adapt to changes in a routine work setting, make
6 simple work-related decisions, ask simple questions or request assistance, and set
7 realistic goals and plan independently. Tr. 431-32.

8 The ALJ gave Dr. Cline's opinion little weight. Tr. 25. Because Dr. Cline's
9 opinion was contradicted by the nonexamining opinions of Drs. Rose and Kessler,
10 Tr. 87-112, 115-40, the ALJ was required to provide specific and legitimate
11 reasons for discounting Dr. Cline's opinion. *Bayliss*, 427 F.3d at 1216.

12 a. Inconsistent with Longitudinal Treatment History

13 The ALJ discounted Dr. Cline's opinion because it was inconsistent with
14 Plaintiff's longitudinal treatment history. Tr. 25. An ALJ may discredit a
15 physician's opinion that is unsupported by the record as a whole. *Batson*, 359 F.3d
16 at 1195. The ALJ found Dr. Cline's opined marked and moderate limitations to be
17 inconsistent with Plaintiff's longitudinal treatment history which showed repeated
18 and consistent clinical findings and observations demonstrating less significant
19 functional limitations. Tr. 22-26; *see, e.g.*, Tr. 364 (November 2015: a mental
20 status examination showed Plaintiff had good eye contact, no psychomotor

1 movements, and normal speech with a rapid rate; his thought process was
2 tangential; he was extremely talkative but easy to redirect; he had euthymic mood,
3 congruent affect, and he denied any psychosis; he had moderate insight and
4 judgment with somewhat impaired concentration and attention; he had intact
5 memory and normal intellectual ability); Tr. 395, 402, 408 (December 2015 to
6 February 2016: Plaintiff was alert and cooperative with an appropriate
7 appearance); Tr. 402-03, 408-09 (December 2015 to January 2016: Plaintiff had
8 normal mood and affect, intact memory and concentration, logical and linear
9 thought, fair insight and judgment, and no ideations of self-harm or harming
10 others; however, his thought content exhibited some paranoia about getting
11 mugged and he carried pepper spray); Tr. 396-97 (February 2016: Plaintiff had
12 neutral to sad mood, intact memory and concentration, logical and linear thought,
13 fair insight and judgment, and no ideations of self-harm or harming others); Tr.
14 444 (April 2016: Plaintiff's speech was slightly pressured and rapid, his mood was
15 slightly manic and positive, and he endorsed homicidal ideation); Tr. 461-62 (May
16 2016: Plaintiff's speech was not as pressured or rapid, his mood was positive, he
17 was slightly manic but with no evidence of depression, he had no homicidal
18 ideation); Tr. 455-56 (June 2016: Plaintiff had congruent affect, intact memory,
19 attention, and concentration, and logical and linear thought form despite facing
20 situational stressors due to legal issues); Tr. 633-34 (August 2016: Plaintiff had

1 normal findings upon mental status examination); Tr. 625 (August 2016: Plaintiff
2 was imprisoned for about four months and returned to treatment in December
3 2016); Tr. 626 (December 2016: Plaintiff had a normal mental status examination
4 with a pleasant and happy mood, full ranging affect, intact memory, attention, and
5 concentration, logical and linear thought form, and normal cognitive function); Tr.
6 558, 564, 572, 577, 582, 590, 608-09, 615-16, 619-20 (January 2017 to November
7 2017: treatment records showed that Plaintiff continued to have generally normal
8 mental status examination findings while he remained medication compliant, with
9 only some reports of mild anxiety secondary to situational stressors); Tr. 590, 598-
10 99 (April 2017: Plaintiff had a slight increase in his anxiety, but he attributed the
11 majority of his symptoms to stress over a court hearing; he returned to having
12 normal mental status examination findings at his next appointment). The ALJ also
13 observed that upon examination, Dr. Cline found Plaintiff presented with an
14 appropriate appearance, demonstrated normal speech, and was cooperative with
15 fair eye contact, although his affect was “slightly flattened” and he was tired. Tr.
16 432-33. The ALJ cited Dr. Cline’s report that when asked about auditory and
17 visual hallucinations, Plaintiff responded “maybe a few times,” and he endorsed
18 ongoing paranoia. Tr. 433. Further, the ALJ noted that Dr. Cline’s report showed
19 Plaintiff endorsed fairly recent suicidal ideations, but he described his attempts at
20 suicide as generally “things that endanger me” rather than overt plans to end his

1 life. Tr. 433. The ALJ noted that Dr. Cline found Plaintiff to be oriented with
2 mostly intact memory, an excellent fund of knowledge, intact insight and
3 judgment, and fair concentration across the mental status examination tasks. Tr.
4 433. Based on this record, the ALJ reasonably concluded that Plaintiff's
5 longitudinal treatment history did not support the marked and moderate limitations
6 assessed by Dr. Cline. Tr. 25. This was a specific and legitimate reason,
7 supported by substantial evidence, to discount Dr. Cline's opinion.

8 b. Familiarity with the Record

9 The ALJ also discounted Dr. Cline's opinion because she did not review
10 Plaintiff's longitudinal medical records before rendering her opinion. Tr. 25. The
11 extent to which a medical source is "familiar with the other information in [the
12 claimant's] case record" is relevant in assessing the weight of that source's medical
13 opinion. *See* 20 C.F.R. §§ 404.1527(c)(6), 416.927(c)(6). Here, the ALJ observed
14 that Dr. Cline did not review any of Plaintiff's records prior to providing her
15 opinion. Tr. 25; *see* Tr. 429 ("Records reviewed: N/A"). Instead, the ALJ found
16 that Drs. Rose and Kessler, who reviewed Plaintiff's medical records, Tr. 88-91,
17 116-119, rendered opinions that were consistent with Plaintiff's longitudinal
18 treatment history. Tr. 26. This was a specific and legitimate reason, supported by
19 substantial evidence, to discount Dr. Cline's opinion.
20

1 c. Length of Treatment Relationship and Frequency of
2 Examination

3 The ALJ discounted Dr. Cline's opinion on the ground that it was based
4 solely on Dr. Cline's onetime evaluation of Plaintiff, as she did not review
5 Plaintiff's longitudinal medical records prior to providing her opinion. Tr. 25. The
6 number of visits a claimant had with a particular provider is a relevant factor in
7 assigning weight to an opinion. 20 C.F.R. §§ 404.1527(c), 416.927(c). However,
8 the fact that an evaluator examined Plaintiff one time is not a legally sufficient
9 basis for rejecting the opinion. The regulations direct that all opinions, including
10 the opinions of examining providers, should be considered. 20 C.F.R. §
11 404.1527(b), (c), 416.927(b), (c). The Court notes the ALJ's rationale is
12 inconsistent with the ALJ giving great weight to Drs. Rose and Kessler, who had
13 no treatment relationship with Plaintiff. Tr. 26. This was not a specific and
14 legitimate reason to discount Dr. Cline's opinion. However, such error is harmless
15 because the ALJ provided specific and legitimate reasons, supported by substantial
16 evidence, discussed *supra*, to discount Dr. Cline's opinion. *Molina*, 674 F.3d at
17 1115.

18 d. Disability Duration Requirement

19 The ALJ discounted Dr. Cline's assessment because she opined that
20 Plaintiff's impairments would cause limitations for a nine to 12-month period. Tr.

1 25, 432. Temporary limitations are not enough to meet the duration requirement
2 for a finding of disability. 20 C.F.R. §§ 404.1505(a), 416.905(a) (requiring a
3 claimant's impairment to be expected to last for a continuous period of not less
4 than twelve months); 42 U.S.C. § 423(d)(1)(A) (same); *Carmickle*, 533 F.3d at
5 1165 (affirming the ALJ's finding that treating physicians' short-term excuse from
6 work was not indicative of "claimant's long-term functioning").

7 The ALJ noted that Dr. Cline's opinion only assessed restrictions for a
8 period of nine to 12 months, which did "not necessarily meet the 12-month
9 duration for a severe impairment." Tr. 25. To be disabled, an impairment must be
10 expected to last for a continuous period of at least 12 months. *See* 20 C.F.R. §§
11 404.1509, 416.909; *see also* 20 C.F.R. §§ 404.1505, 416.905. Here, Dr. Cline
12 opined that Plaintiff would be impaired with available treatment for up to 12
13 months. Tr. 432. Therefore, Dr. Cline's opinion satisfied the disability duration
14 requirement and this was not a specific and legitimate reason to discredit her
15 opinion. However, such error is harmless because the ALJ provided other specific
16 and legitimate reasons, supported by substantial evidence, discussed *supra*, to
17 discount Dr. Cline's opinion. *Molina*, 674 F.3d at 1115.

18 2. *Dr. Colby*

19 On April 12, 2016, Faulder Colby, Ph.D., issued an opinion as to Plaintiff's
20 limitations. Tr. 434-36, 653. Dr. Colby indicated that Plaintiff's application

1 included Dr. Cline's evaluation and records from Central Washington
2 Comprehensive Mental Health. Tr. 434. Dr. Colby listed diagnoses of bipolar I
3 disorder, borderline personality disorder, and antisocial personality disorder. Tr.
4 436. Dr. Colby's opinion mirrored that of Dr. Cline, citing marked limitations in
5 Plaintiff's ability to communicate and perform effectively in a work setting,
6 maintain appropriate behavior in a work setting, and complete a normal workday
7 and workweek without interruptions from psychologically based symptoms. Tr.
8 435. He noted moderate limitations in Plaintiff's ability to understand, remember,
9 and persist in tasks by following detailed instructions, perform activities within a
10 schedule, maintain regular attendance, be punctual within customary tolerances
11 without special supervision, adapt to changes in a routine work setting, make
12 simple work-related decisions, ask simple questions or request assistance, and set
13 realistic goals and plan independently. Tr. 435.

14 The ALJ gave Dr. Colby's opinion little weight. Tr. 25. Because Dr.
15 Colby's opinion was contradicted by the nonexamining opinions of Drs. Rose and
16 Kessler, Tr. 87-112, 115-40, the ALJ was required to provide specific and
17 legitimate reasons for discounting Dr. Colby's opinion. *Bayliss*, 427 F.3d at 1216.

18 a. Opinion Based on Discredited Medical Opinion

19 The ALJ discounted Dr. Colby's opinion for relying on Dr. Cline's
20 discredited opinion. Tr. 25. An ALJ may reject an opinion that is based heavily on

1 another physician's properly discredited opinion. *Paulson v. Astrue*, 368 Fed.
2 App'x 758, 760 (9th Cir. 2010) (unpublished). The ALJ observed that Dr. Colby
3 based his opinion on Dr. Cline's evaluation, which the ALJ found to be
4 inconsistent with Plaintiff's longitudinal treatment history, and Dr. Colby offered
5 no independent objective findings for his affirmation of Dr. Cline's report. Tr. 25.
6 Plaintiff argues that Dr. Colby's assessment was "not based solely on Dr. Cline's
7 evaluation," as he also reviewed Plaintiff's mental health records. ECF No. 14 at
8 17 (citing Tr. 653). While Dr. Colby did also review Plaintiff's mental health
9 records, his opined functional limitations mirrored those assessed by Dr. Cline, and
10 Dr. Colby did not explain any of his opinions or set forth any independent
11 objective findings for his affirmation of Dr. Cline's report, other than to state that
12 Dr. Cline's "diagnoses were supported by her evaluation and report." Tr. 429-36,
13 653. Therefore, it was reasonable for the ALJ to find that Dr. Colby's opinion was
14 based on Dr. Cline's discredited evaluation. Tr. 25. Because the Court found
15 *supra* that the ALJ provided legally sufficient reasons to discredit Dr. Cline's
16 opinion, this was a specific and legitimate reason to discredit Dr. Colby's opinion.

17 b. Check Box Form

18 The ALJ also discounted Dr. Colby's opinion because it was only a check
19 box form with no explanation for the assessed limitations. Tr. 25. A medical
20 opinion may be rejected by the ALJ if it is conclusory or inadequately supported.

1 *Bray*, 554 F.3d at 1228. For this reason, individual medical opinions are preferred
2 over check box reports. *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996);
3 *Murray v. Heckler*, 722 F.2d 499, 501 (9th Cir. 1983). However, if treatment notes
4 are consistent with the opinion, a conclusory opinion, such as a check-the-box
5 form, may not automatically be rejected. *See Garrison*, 759 F.3d at 1014 n.17; *see*
6 *also Trevizo v. Berryhill*, 871 F.3d 664, 677 n.4 (9th Cir. 2017) (“[T]here is no
7 authority that a ‘check-the-box’ form is any less reliable than any other type of
8 form”). Here, Dr. Colby’s opinion consisted of a check box form, with no
9 explanation as to the cause of Plaintiff’s limitations, the extent of the limitations, or
10 why the limitations would be expected to last for 12 months. Tr. 434-35. While
11 Dr. Colby had access to Plaintiff’s treatment records from Central Washington
12 Comprehensive Mental Health, Tr. 434, as discussed throughout the ALJ’s
13 decision, Plaintiff’s longitudinal treatment records did not support marked and
14 moderate functional limitations. Given the lack of explanation, this was a specific
15 and legitimate reason to reject Dr. Colby’s opinion.⁴

17 ⁴ Plaintiff also argues that the ALJ erred by failing to consider that Dr. Colby’s
18 opinion represented a governmental determination of disability. ECF No. 14 at 18
19 (citing Tr. 25). Plaintiff cites *Holbrook v. Berryhill*, 696 Fed. App’x 846 (9th Cir.
20 2017) (unpublished opinion), to suggest that the ALJ failed to adequately consider

1 3. *Ms. Garcia*

2 On March 17, 2017, Ivonne Garcia, MHP, MS, completed a medical source
3 statement. Tr. 437-40. Ms. Garcia opined that Plaintiff was markedly limited in
4 his ability to carry out detailed instructions, sustain an ordinary routine without
5 special supervision, work in coordination with or proximity to others without being
6 distracted by them, make simple work-related decisions, ask simple questions or
7 request assistance, accept instructions and respond appropriately to criticism from

8
9 _____
10 Dr. Colby's opinion. ECF No. 14 at 18. In *Holbrook*, the ALJ failed to adequately
11 consider a State disability determination in his decision. *Id.* Although §§
12 404.1504 and 416.904 provide that a state disability decision is not binding on the
13 ALJ, a blanket rejection of a Department of Social and Health Services (DSHS)
14 opinion is contrary to the Social Security requirements to evaluate each medical
15 source opinion and consider the supporting evidence underlying the State agency
16 decision. *See* 20 C.F.R. §§ 404.1513(a), 416.913(a); *see also* 404.1527(b), (c),
17 416.927(b), (c). Here, the ALJ noted that Dr. Colby assessed Plaintiff for DSHS,
18 and as discussed *supra*, provided specific and legitimate reasons to discount his
19 opinion. Tr. 25.

1 supervisors, get along with coworkers or peers without distracting them or
2 exhibiting behavioral extremes, maintain socially appropriate behavior and adhere
3 to basic standards of neatness and cleanliness, respond appropriately to changes in
4 the work setting, travel in unfamiliar places or use public transportation, set
5 realistic goals or make plans independently of others, and maintain concentration,
6 persistence, or pace. Tr. 437-39. She opined that Plaintiff was moderately limited
7 in his ability to carry out very short, simple instructions, maintain attention and
8 concentration for extended periods, perform activities within a schedule, maintain
9 regular attendance and be punctual within customary tolerances, complete a normal
10 workday and workweek without interruptions from psychologically based
11 symptoms and perform at a consistent pace without an unreasonable number and
12 length of rest periods, interact appropriately with the general public, be aware of
13 normal hazards and take appropriate precautions, perform activities of daily living,
14 and maintain social functioning. Tr. 437-39. Ms. Garcia opined that Plaintiff met
15 the paragraph C criteria of the mental listings, she would likely be off-task 12
16 percent to 20 percent of the time during a 40-hour workweek, and she would likely
17 miss three workdays per month. Tr. 439.

18 The ALJ gave little weight to Ms. Garcia's opinion. Tr. 25. Because Ms.
19 Garcia is an "other source," the ALJ was required to provide germane reasons to
20 discount her opinion. *Dodrill v. Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993).

1 a. Check Box Form

2 The ALJ discounted Ms. Garcia's opinion because it was a check box form
3 with no explanation for the assessed limitations. Tr. 25. A medical opinion may
4 be rejected by the ALJ if it is conclusory or inadequately supported. *Bray*, 554
5 F.3d at 1228. For this reason, individual medical opinions are preferred over
6 check-box reports. *Crane*, 76 F.3d at 253; *Murray*, 722 F.2d at 501. However, if
7 treatment notes are consistent with the opinion, a conclusory opinion, such as a
8 check-the-box form, may not automatically be rejected. *See Garrison*, 759 F.3d at
9 1014 n.17; *see also Trevizo*, 871 F.3d at 677 n.4 ("[T]here is no authority that a
10 'check-the-box' form is any less reliable than any other type of form"). Here, the
11 ALJ was correct that Ms. Garcia did not cite any medical evidence to support her
12 opinion. Tr. 25. However, that Ms. Garcia's opinion was set forth in a checkbox
13 form is not enough by itself to discount her treating-examiner opinion, if it was
14 otherwise adequately supported by Ms. Garcia's medical notes. *See Garrison*, 759
15 F.3d at 1014 n.17; *see also Trevizo*, 871 F.3d at 667 n.4. Here, even if the ALJ
16 erred by discounting Ms. Garcia's opinion because it was inadequately supported,
17 this error is harmless because, as is discussed below, Ms. Garcia's opinion was
18 inconsistent with Plaintiff's longitudinal treatment record. *See Molina*, 674 F.3d at
19 1115.

b. Inconsistent with Longitudinal Treatment History

The ALJ also discounted Ms. Garcia's opinion because it was inconsistent with Plaintiff's longitudinal treatment history. Tr. 25. An ALJ may discredit a physician's opinion that is unsupported by the record as a whole. *Batson*, 359 F.3d at 1195. The ALJ found Ms. Garcia's opinion to be inconsistent with clinical findings and professional observations throughout Plaintiff's longitudinal treatment history, which showed mostly normal mental status examinations on a monthly basis for the last three years. Tr. 22-26; *see, e.g.*, Tr. 364 (November 2015: a mental status examination showed Plaintiff had good eye contact, no psychomotor movements, and normal speech with a rapid rate; his thought process was tangential; he was extremely talkative but easy to redirect; he had euthymic mood, congruent affect, and he denied any psychosis; he had moderate insight and judgment with somewhat impaired concentration and attention; he had intact memory and normal intellectual ability); Tr. 395, 402, 408 (December 2015 to February 2016: Plaintiff was alert and cooperative with an appropriate appearance); Tr. 402-03, 408-09 (December 2015 to January 2016: Plaintiff had normal mood and affect, intact memory and concentration, logical and linear thought, fair insight and judgment, and no ideations of self-harm or harming others; however, his thought content exhibited some paranoia about getting mugged and he carried pepper spray); Tr. 396-97 (February 2016: Plaintiff had

1 neutral to sad mood, intact memory and concentration, logical and linear thought,
2 fair insight and judgment, and no ideations of self-harm or harming others); Tr.
3 444 (April 2016: Plaintiff's speech was slightly pressured and rapid, his mood was
4 slightly manic and positive, and he endorsed homicidal ideation); Tr. 461-62 (May
5 2016: Plaintiff's speech was not as pressured or rapid, his mood was positive, he
6 was slightly manic but with no evidence of depression, he had no homicidal
7 ideation); Tr. 455-56 (June 2016: Plaintiff had congruent affect; intact memory,
8 attention, and concentration, and logical and linear thought form despite facing
9 situational stressors due to legal issues); Tr. 633-34 (August 2016: Plaintiff had
10 normal findings upon mental status examination); Tr. 625 (August 2016: Plaintiff
11 was imprisoned for about four months and returned to treatment in December
12 2016); Tr. 626 (December 2016: Plaintiff had a normal mental status examination
13 with a pleasant and happy mood, full ranging affect, intact memory, attention, and
14 concentration, logical and linear thought form, and normal cognitive function); Tr.
15 558, 564, 572, 577, 582, 590, 608-09, 615-16, 619-20 (January 2017 to November
16 2017: treatment records showed that Plaintiff continued to have generally normal
17 mental status examination findings while he remained medication compliant, with
18 only some reports of mild anxiety secondary to situational stressors); Tr. 590, 598-
19 99 (April 13, 2017: Plaintiff had a slight increase in his anxiety, but he attributed
20 the majority of his symptoms to stress over a court hearing; he returned to having

1 normal mental status examination findings at his next appointment). The ALJ
2 reasonably concluded that Plaintiff's longitudinal treatment history did not support
3 the marked and moderate limitations assessed by Ms. Garcia. Tr. 25. This was a
4 germane reason to discount Ms. Garcia's opinion.

5 **CONCLUSION**

6 Having reviewed the record and the ALJ's findings, the Court concludes the
7 ALJ's decision is supported by substantial evidence and free of harmful legal error.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.

10 2. Defendant's Motion for Summary Judgment, **ECF No. 15**, is
11 **GRANTED**.

12 3. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

13 The District Court Executive is directed to file this Order, provide copies to
14 counsel, and **CLOSE THE FILE**.

15 DATED March 5, 2020.

16 *s/Mary K. Dimke*
17 MARY K. DIMKE
18 UNITED STATES MAGISTRATE JUDGE
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